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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

PEAVEY ELECTRONICS CORPORATION,

Plaintiff,

- against -

BEHRINGER INTERNATIONAL GMBH, a  
German Corporation, BEHRINGER  
LUXEMBOURG SÀRL, a Luxembourg  
Corporation, BEHRINGER HOLDINGS (PTE)  
LTD., a Singapore Company, RED CHIP  
COMPANY LTD., a British Virgin Islands  
corporation, BEHRINGER USA, INC., a  
Washington Corporation, MUSIC GROUP  
LTD., corporate form unknown, BEHRINGER  
COMMERCIAL OFFSHORE DE MACAU  
LIMITADA, Monaco corporation and John Does  
1 -10

Defendants.

Civil Action No.:

**COMPLAINT**

Plaintiff PEAVEY ELECTRONICS CORPORATION (“Peavey”), by its undersigned counsel, alleges and hereby complains against BEHRINGER INTERNATIONAL GMBH (“Behringer Int’l”), BEHRINGER LUXEMBOURG SÀRL (“Behringer Luxembourg”), BEHRINGER HOLDINGS (PTE) LTD (“Behringer Holdings”), RED CHIP COMPANY LTD. (“Red Chip”), BEHRINGER USA, INC. (“Behringer USA”), MUSIC GROUP LTD. (“Music Group”), BEHRINGER COMMERCIAL OFFSHORE DE MACAU LIMITADA (“BEHRINGER OFFSHORE”), and John Does 1-10 (collectively “Defendants”) as follows:

### **NATURE OF THE ACTION**

1. This is an action for false patent marking under 35 U.S.C. § 292.
2. Upon information and belief, Defendants have, and continue, to mark upon, or affix to, or use in advertising in connection with certain products, the words “patent applied for,” “patent pending,” or any word importing that an application for patent has been made, when no application is pending, for the purpose of deceiving the public.
3. Peavey seeks an award of monetary damages against Defendants, one-half of which shall be paid to the United States pursuant to 35 U.S.C. §292(b).

### **THE PARTIES**

4. Peavey is a corporation organized and existing under the laws of Delaware with its principle place of business at 5022 Hartley Peavey Drive, Meridian, MS 39305, and is doing business in this district.
5. Upon information and belief, Defendants manufacture, offer for sale, sell, and/or distribute amplifiers, speakers, mixers, professional audio equipment, other electronic audio-enhancement equipment, and related products.
6. Upon information and belief, Behringer Int’l is a company organized and existing under the laws of Germany with its principal place of business at Hanns-Martin-Schleyer-Str. 36-38, 47877 Willich, Nordrhein-Westfalen, Germany, and conducts business itself, or through their agents, in this district. Behringer Int’l promotes, advertises, distributes and sells their products worldwide, including in the state of New Jersey. Behringer Int’l products, including those at issue here, have been purchased and sold in the state of New Jersey.

7. Upon information and belief, Behringer Luxembourg is a company organized and existing under the laws of Luxembourg, with its principal place of business at 21 Rue Fort Elisabeth, L-1463, Luxembourg, and conducts business itself, or through its agents, in this district.

8. Upon information and belief, Behringer Holdings is a company organized and existing under the laws of Singapore, with its principal place of business at 1 Kim Seng Promenade #08-08, Great World City West Tower, Singapore 237994, and conducts business itself, or through its agents, in this district.

9. Upon information and belief, Red Chip is a corporation organized and existing under the laws of the British Virgin Islands, with a principal place of business at Trident Chambers Wickhams Cay, P.O. Box 146, Road Town, Tortola, British Virgin Islands, and conducts business itself, or through its agents, in this district.

10. Upon information and belief, Behringer USA is a company organized and existing under the laws of the State of Washington with a principal place of business at 18912 North Creek Parkway, Suite 200, Bothell, WA 98011, and conducts business itself, or through its agents, in this district.

11. Upon information and belief, Music Group is a company whose corporate from is not know, with a principle place of business at Le Victoria, 13 Boulevard Princesse Charlotte, Bloc D – N D7.2, MC 98000, Monaco and conducts business itself, or through its agents, in this district.

12. Upon information and belief, Behringer Offshore is a company organized and existing under the laws of Monaco, with a principle place of business at Le Victoria, 13 Boulevard Princesse Charlotte, Bloc D – N D7.2, MC 98000, Monaco and conducts business itself, or through its agents, in this district.

13. Upon information and belief, Behringer Holdings is affiliated with and/or controls Behringer USA. Behringer Holdings and Behringer USA offer for sale, sell, import and/or distribute products in this district, among others.

14. Upon information and belief, Behringer Int'l is affiliated with and/or controls Behringer USA. Behringer Int'l and Behringer USA offer for sale, sell, import and/or distribute Defendants' Infringing Products in this district, among others.

15. Upon information and belief, Red Chip is, and has been, an intellectual property holding company for companies including, not limited to, Behringer USA and Behringer Int'l.

16. Upon information and belief, Music Group is affiliated with and/or controls Red Chip and the Behringer brand.

17. Upon information and belief, Behringer offshore is affiliated with and/or controls Music Group.

### **JURISDICTION AND VENUE**

18. This action arises under 35 U.S.C. § 292. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 (a).

19. Venue is proper in this judicial district under 28 U.S.C §1391.

20. This Court has personal jurisdiction over each Defendant because each of the named Defendants has, directly or indirectly, conducted and/or solicited business within the State of New Jersey, and within this judicial district, and/or otherwise purposefully availed itself of the benefits of this forum. The claims set forth herein arise out of activities relating to such actual and/or solicited business activities and/or benefits.

**FACTS**

21. Upon information and belief, DEFENDANTS, collectively and/or individually, have in the past manufactured and marketed (or caused to be manufactured and marketed) and/or presently manufacture and market (or cause to be manufactured or marketed) products for sale to the general consuming public, including, among other things, musical and sound reinforcement equipment.

22. Upon information and belief, Defendants have in the past manufactured and marketed (or caused to be manufactured and marketed) and/or presently manufacture and market (or cause to be manufactured or marketed) products incorporating what Defendants call the “FBQ.”

23. Upon information and belief, the FBQ is a graphic equalizer that gives a visual indication of the frequency at which audio feedback is occurring.

24. Upon information and belief, Defendants, or an agent thereof, applied for a patent for their FBQ feature on July 24, 2002 (the “Patent Application”).

25. Upon information and belief, Defendants expressly confirmed abandonment of the Patent Application on June 8, 2007 (the Abandonment Date”).

26. Upon information and belief, since the Abandonment Date, DEFENDANTS, collectively or individually, have marked (or caused to be marked) and presently mark (or cause to be marked) at least the following products incorporating the FBQ feature (directly or on the packaging and advertising thereof) with the term “Patent Pending” despite having no application pending before the United States Patent and Trademark Office: EURODESK SX2442FX, EURODESK SX3242FX, XENYX 1832FX, XENYX 1222FX., EUROPOWER PMP980S, EUROPOWER PMP960M, EUROPOWER PMP 1280S, EUROPOWER PMP 5000, EUROPOWER PMP 3000,

EUROPOWER PMP 1000, EUROPOWER PMP 518M, EUROPORT EPA 900, ULTRAGRAPH PRO FBQ6200, ULTRAGRAPH PRO FBQ1502, ULTRAGRAPH DIGITAL DEQ1024, ULTRAGRAPH DIGITAL DEQ3102, MINIFBQ FBQ800, ULTRACOUSTIC ACX1800, ULTRACOUSTIC ACX900, ULTRACOUSTIC ACX450, ULTRABASS BXL3000A, ULTRABASS BXL1800A, ULTRABASS BXL900A, ULTRABASS BXL450A, ULTRABASS BXL3000, ULTRABASS BXL1800, ULTRABASS BXL900, ULTRABASS BXL450, ULTRABASS BXR 1800H, ULTRATONE K900FX, ULTRATONE K450FX, ULTRATONE K3000FX, ULTRATONE K1800FX, EURORACK UB1222FX-PRO, EURORACK UB1832FX-PRO, EUROPOWER PMH5000, EUROPOWER PMH3000, EUROPOWER PMH1000, EUROPOWER PMH 880S, EUROPOWER PMH660M, and EUROPOWER PMH518M (collectively, the “Falsely Marked Products”).

#### **CAUSE OF ACTION FOR FALSE PATENT MARKING**

27. Peavey repeats, realleges, and incorporates by reference each and every paragraph above as if set forth fully herein.

28. Upon information and belief, Defendants are sophisticated companies which have many decades of experience with applying for, obtaining, and litigating patents, and know (themselves or by their representatives), at least constructively, when a patent application is abandoned, there is no patent pending.

29. Because the Defendants expressly abandoned the Patent Application, Defendants cannot have any reasonable belief that the FBQ feature on the Falsely Marked Products is patent pending.

30. At least for the reasons set forth herein, and/or for other reasons which will be later evidenced, DEFENDANTS have, on information and belief, "falsely marked" their products, with the intent to deceive the public, in violation of 35 U.S.C. §292.

WHEREFORE, Peavey respectfully requests this Court, pursuant to 35 U.S.C. §292, to:

- A. Enter judgment against DEFENDANTS and in favor of Peavey for the violations alleged in this Complaint;
- B. Order DEFENDANTS to pay a civil monetary fine of \$500 per false marking offense, or an alternative amount as determined by the Court, one-half of which shall be paid to the United States.
- C. Grant Peavey such other and further relief as it may deem just and equitable.

### **JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Peavey hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: April 23, 2010

s/ Ronald S. Bienstock

Ronald S. Bienstock, Esq.  
Bienstock & Michael, P.C.

*Attorneys for Plaintiff  
Peavey Electronics Corporation*